

Batson Challenge

Procedure requires counsel to be provided opportunity to object to potential peremptory challenges which they believe are based on racial, gender or ethnic discrimination, before the court announces the exclusion and excuse of challenged jurors. After objection is raised, all further proceedings on the issue should take place outside the presence of the jury. It is important that reasons for each finding on the record be carefully articulated.

Determine whether the peremptory challenge was exercised improperly by using the following three- part analysis:

1. Has the party raising the challenge established a prima facia case of purposeful discrimination? If no, no explanation required. If yes, step 2.

considerations:

- a. nature of questions asked
- b. statements made by the proponent of the strike during voir dire
- c. any pattern of strikes against prospective jurors
- d. a recognized inference that peremptory challenges create an atmosphere which allows discrimination by those inclined to do so

2. Shifting the burden to the striking party, has counsel offered a neutral explanation for challenging the juror? (this cannot be established with a simple denial or affirming good faith, but need not rise to the level of justifying a challenge for cause) The trial court must accept the explanation unless the neutral explanation is inherently discriminatory.

3. Considering the totality of the relevant circumstances, has the complaining party established purposeful discrimination? Is the neutral explanation by the striking party merely a pretext (an excuse disguised as truth) for intentional discrimination? **The trial court's factual findings are imperative in this context and should be carefully articulated.**

considerations may include:

- a. whether the reason given has a disproportionate impact on a particular group
- b. whether similarly situated members of the group were seated on the jury
- c. whether the reason has any ostensible relationship to the case on trial
- d. demeanor of attorney who exercises the challenge